IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1064 of 1997

with

CRIMINAL APPEAL No 1091 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KISHOR KALYANBHAI @ KARANSINH GURU RAJENDRAGIRI RAJPUT

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Appeal No. 1064 of 1997

MRS SHILPA J UNWALLA for Petitioner No. 1

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

2. Criminal Appeal No. 1091 of 1997

MRS SHILPA J UNWALLA for Petitioner No. 1

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 27/07/2001

ORAL JUDGEMENT

Both these appeals are disposed of by this common judgement and order as they are arising out of the judgement and order of conviction and sentence dated 29.9.1997 passed by the learned Special Judge, Bhavnagar in Special Case No. 13 of 1997.

Criminal Appeal No. 1064/97 is filed by accused Kishore Kalyabhai alias Karansinh Guru Rajendragiri, whereas Criminal Appeal No. 1091 of 1997 is filed by accused Udiya Virapashu Jagili Sahu and accused Udiya Nakulsahu Banvalisahu. Accused Kishore Kalyabhai claims to be a "sadhu". The accused Udiya Virapashu Jagili Sahu and accused Udiya Nakulsahu Banvalisahu are labourers. 140 grams of Ganja was found from the possession of accused Kishore and 6.5 kgs of Ganja was found from the hut of two other accused Udiya Virpashu Jagili Sahu and Udiya Nakulsahu Banvalisahu on 12.2.1997. All the accused were therefore charged and tried for the offences under Section 20(b)(i) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act"). After considering the evidence of the prosecution witnesses as well as the defence of the accused, the learned Special Judge by judgement and order dated 29.9.1997, convicted all the accused for the offence under Section 20(b)(i) of the Act and sentenced all of them for rigorous imprisonment of 5 years and to pay fine of Rs. 2,000/-, in default to further undergo six months simple imprisonment.

Mrs Shilpa Unwala, learned Counsel appearing for the appellants in both these appeals has not seriously challenged the judgement and order of conviction passed by the learned trial Judge, in view of the reasoning assigned by the learned Single Judge in his impugned order. However, she has restricted her challenge on the point of sentence. She has submitted that under Section 20(b)(i) of the Act, the accused can be punished with rigorous imprisonment for a term which may extend to 5 years with fine, which may extent to Rs. 50,000/- and that is the outer limit under the Statute. She submitted that in the instant case, looking to the nature of the substance and its quantity and the social background of the appellants accused, the learned Judge ought not to have imposed maximum sentence of 5 years RI. She submitted that the accused are in jail since their arrest i.e. 12.2.1997 and even after the appeals were admitted on 26.2.1998, they are not released on bail and therefore, they are in jail. She submitted that no

complaints were made against them when they were in jail for all these years and therefore, taking into consideration the jail conduct of the convicts and the circumstances stated above, the order of substantive sentence of 5 years be reduced as sentence already undergone.

However, learned Additional Public Prosecutor Mr. B.Y.Mankad vehemently submitted that considering the gravity of the offence and the reasons assigned by the learned Special Judge, this Court should not interfere because the accused are found guilty and convicted for the serious offence of NDPS Act.

It is true that the appellants accused are found guilty for the serious offence under Section 20(b)(i) of the Act. However, looking to the nature of the substance found from them, the quantity and the family background and other peculiar facts and circumstances of the case, I am of the considered opinion that the interest of justice would be served by reducing the substantive sentence of 5 years RI to the sentence as already undergone. Practically for all the purposes, all the accused have almost completed the sentence. Therefore, the substantive sentence of 5 years RI in the instant case is required to be modified as sentence already undergone.

Accordingly, the order of conviction passed by the learned Special Judge convicting all the appellants accused for the offence under Section 20(b)(i) of the Act is confirmed. However, substantive sentence of 5 years RI is reduced as sentence already undergone. However, the order of fine of Rs. 2,000 imposed by the learned Special Judge is not disturbed. If the fine is not paid so far by the appellants accused, then they shall have to pay it within one month from today, failing which they will have to undergo the sentence as imposed by the trial Court. The order of sentence undergone will be treated only from the date on which the accused deposited the amount of fine. If the fine is already deposited, then they will have to be released from the jail forthwith, if they are otherwise not required for any other case. Accordingly, both these appeals are partly allowed on the point of sentence only.

(B.J.Shethna,J.)

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